

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

LESER, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 4:09CV130
	:	
DELTA-T CORPORATION,	:	
	:	
Defendant.	:	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff's "Motion to Enforce Settlement Agreement" (Doc. #13) was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72(a) of the Federal Rules of Civil Procedure, as well as Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia.

The Plaintiff filed a Motion to Enforce the Settlement Agreement on December 16, 2009. The Defendant, Delta-T Corporation, filed no written response. On February 19, 2010 both parties appeared by counsel for an evidentiary hearing. The Court received exhibits, evidence and argument of counsel, and filed a Report and Recommendation recommending the plaintiff receive judgment against the defendant in the amount of \$60,000.00, which was the sum then due and unpaid pursuant to the parties' Settlement Agreement.

The Magistrate Judge's Report and Recommendation was filed March 1, 2010, however, a portion of page three of the Report was missing and as a result on March 19, 2010, a Corrected Magistrate Judge's Report and Recommendation was filed.

On March 19, 2010 Plaintiff filed an Objection to the Corrected Magistrate Judge's Report and Recommendation asserting that additional sums had become due and seeking judgment for those additional sums. The District Judge conducted a de novo review and found the objection well-taken. The matter was referred to the Magistrate Judge and set for a second hearing on May 17, 2010, for presentation of evidence concerning the sums then due and unpaid.

On May 11, 2010 counsel for defendant filed a Motion to Withdraw as Attorney and on May 13, 2010 filed his supporting brief and Notice of Hearing, and certified in writing that his client, the defendant, was served with a copy of his withdrawal pleadings. Counsel for the defendant also submitted an Order permitting withdrawal which was endorsed by counsel for both parties and by a director of the defendant, Delta-T.

On May 17, 2010 the plaintiff appeared, by counsel, and presented evidence to establish that the entire balance owed under the Settlement Agreement was now due, and that the defendant had made no payments. This evidence was uncontradicted.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Plaintiff, Leser, LLC, filed suit against the Defendant, Delta-T Corporation, to recover for a breach of contract and unjust enrichment. In November, 2009, the parties reached agreement on the terms of a settlement which called for Delta-T to pay Leser, LLC the total sum of \$129,734.15 in a series of payments due between December 15, 2009 and May 15, 2010. The Settlement Agreement was memorialized in a 2-page written document received in evidence by the Court at the February 19, 2010 hearing. Under the terms of the Agreement, Delta-T was required to pay Leser, LLC \$20,000.00 each month beginning December 15, 2009 and ending April 15, 2010, as well as a final payment of \$29,734.15 by May 15, 2010. The Agreement contains no contractual rate of interest, no default provisions, and no clause requiring acceleration of the balance due if Delta-T failed to make the initial payments.

Based on evidence proffered by the Plaintiff and not opposed by the Defendant, Delta-T has failed to make any payments under the parties' Settlement Agreement. Accordingly, based on the evidence presented at both the February 19, 2010 hearing and the May 17, 2010 hearing, Delta-T is in default of its obligations to make all the payments under the parties' Settlement Agreement.

II. RECOMMENDATION

The defendant's counsel has moved to withdraw as attorney for Delta-T. The plaintiff does not object and the defendant, by a director, has received notice of counsel's motion and indicates the defendant does not object. Accordingly, the undersigned recommends granting defendant counsel's motion for leave to withdraw as counsel.

By the express terms of the Court's Order entered December 7, 2009, this Court retained jurisdiction in the matter solely for the purpose of enforcing the Settlement Agreement. Based on the evidence proffered at two hearings and unrebutted by the defendant, Delta-T had defaulted on its obligation to make the payments due. Accordingly, the undersigned recommends that the Court enter an Order granting judgment in favor of Leser, LLC, and against Delta-T Corporation in the amount of \$129,734.15, representing the sums due Leser, LLC as of May 17, 2010, and justified by the undisputed evidence and the parties' Settlement Agreement. Further, as the entire balance of the settlement payment is now due and owing, the undersigned recommends that the Order granting judgment be a Final Order, and that the Court enter final judgment.

III. REVIEW PROCEDURE

By copy of this Report and Recommendation, the parties are notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within fourteen (14) days from the date of mailing of this report to the objecting party, 28 U.S.C. § 636(b)(1)(C), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. The defendant, Delta-T, is reminded that it must file any response to the findings and recommendation through counsel.

2. A District Judge shall make a de novo determination of those portions of this report or specified findings or recommendations to which objection is made.

The parties are further notified that failure to file timely objections to the findings and recommendations set forth above will result in waiver of right to appeal from a judgment of this Court based on such findings and recommendations. Thomas v. Arn, 474 U.S. 140 (1985); Carr v. Hutto, 737 F.2d 433 (4th Cir. 1984), cert. denied, 474 U.S. 1019 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk shall mail or deliver a copy of this Report and Recommendation to counsel of record for the parties and to Delta-T Corporation.

/s/
Douglas E. Miller
United States Magistrate Judge

DOUGLAS E. MILLER
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia
May 18, 2010